

Salvation and Social Justice

Liberating Public Policy Theologically

Liberating Youth Justice Theologically

Faith Roots of Retributive & Punitive Justice

The concept of retributive justice has been used in a variety of ways, but it is best understood as that form of justice committed to the following three principles: (1) that those who commit certain kinds of wrongful acts, paradigmatically serious crimes, morally deserve to suffer a proportionate punishment; (2) that it is intrinsically morally good—good without reference to any other goods that might arise—if some legitimate punisher gives them the punishment they deserve; and (3) that it is morally impermissible intentionally to punish the innocent or to inflict disproportionately large punishments on wrongdoers. - Stanford Encyclopedia of Psychology

Retributive justice has its roots in the worst interpretations of religious texts. An “eye for an eye” can find its roots as far back as the Code of Hammurabi and is also mentioned in the Torah, New Testament and the Holy Quran.ⁱ While various religions and scholars interpret divine justice in various ways, punitive interpretations have greatly influenced the criminal and juvenile justice systems. Internationally, religion has always played a serious and influential role in social policy and culture.ⁱⁱ

Conrad Brunk writes that, “In deeply religious theocratic societies, there is little or no distinction between a moral wrong, or ‘sin,’ and a legal wrong, or ‘crime.’ Since according to this view the civil law itself is part of the divine law, a legal offense is therefore an offense against the deity. Thus, it is natural that criminal punishment in such societies is indistinguishable from divine retribution.”ⁱⁱⁱ

T. Richard Snyder notes the meticulous ways the Christian church has imposed its retributive justice interpretations on culture and society through violence, inhumane executions, levying decrees and sanctions, governmental manipulation, excommunicating, and ostracization. Whether intentionally insidious for selfish gain or sincere religious zealotry, the church has used its power and influence to bend society, governments, and culture by its concepts of divine retribution.^{iv}

Brunk writes that “a fundamental conception of moral wrongdoing, or sin, holds that the only way it can be atoned for is through the suffering of the offender, or, as in the Judeo-Christian tradition, the suffering of a sacrificial substitute. Hence the principle that ‘Only through the shedding of blood is there remission of sin.’”^v

Isaac Kalimi explains that while most Rabbis as early as the second century have interpreted “eye for an eye” as the equitable means of stopping disproportionate retributive practices of extremely harsh unmeasured retribution, there were those few whom interpreted it literally.^{vi}

Abdulaziz Sachedina asserts that the Islamic eye for an eye doctrine described in Qur’an II:179 has been interpreted by most Muslim jurists to justify retributive justice.^{vii} Majid Khadduri writes that Islamic views of justice became distorted and retributive in social unrest and political disorder in Arabian tribal societies in their quest for survival during political unrest.^{viii} Ridoan Karim, MD, Shah Newaz, and Ahmed Imran Kabir asserts these various interpretations disregard the broader context of forgiveness.^{ix}

J.D.M. Derrett argues that retributive interpretations of Hinduism are greatly influenced by colonialism.^x Interpretations of the Dharma system and ideas around caste can be problematic when used to sanction inequality.^{xi} Karma and caste have been used as a means or forms of retributive justice that one’s caste or circumstance are just deserts,^{xii} leading to harsher penalties for those considered less than. Even certain colonists such as Sir Thomas Andrew Lumisden Strange, Chief Justice and Recorder of Fort St. George (Madras), British India and other jurists thought “certain penal codes of Hindus were too cruel.”^{xiii}

Soho Machid writes that in sixth-century Japan people saw Buddhism as “almost exclusively a certain law of causes and effects: retributive justice.” Early Heian works have statements like, “what guidelines is there in repenting evil and practicing good if not the law of retribution.”^{xiv} Retributive interpretations of Buddhism like Hinduism also see punishment as a result of Karma.^{xv}

Retributive justice has left us with a huge costs, broken relationships and unresolved issues because it fails to deal with broken relationships. The current system is largely based on retributive concepts with origins in religion but have largely ignored the concepts of healing restoration and reconciliation within those same traditions.^{xvi}

Secular Attempts to undo Retributive Justice

As religious interpretation and theory changed and as secularism and social theory emerged so has the changing approaches to justice. Many began to realize that the harshness of theology rooted retribution had failed.^{xvii}

For instance, the utilitarian deterrence approach to punishment emerged in the 18th century during the Enlightenment period from the work of Cesar Beccaria, Jeremy Bentham, and John Stuart Mill. Deterrence prioritized the rights of the middle class and land owners. Its aim was to deter crime and was thought of as more humanitarian and shifted the moral framework of justice to a libertarian frame work. Punishment was only used in the extent to its benefit to social order. The goal was to protect potential victims more than actual victims and society from offenders through incarceration. Practically, deterrence has failed to deterred crime.^{xviii} It remains retributive in every aspect. Deterrence only makes minor shifts in punitive degree, tactics, and moral

framework. It still uses its methods punitively and retributively. The deterrence approach fails to realize the social nature of crime.^{xix}

The rehabilitative approach occurs with the rise of the social sciences. It believes that crime is due to a deteriorated mental state.^{xx} The therapeutic state sought to move from retribution towards addressing behavioral and mental illness. Michelle Phelps states that various scholars of crime and punishment “note that between the 1950s and 1970s, the ideal model of correctional administration founded on the belief that trained experts could administer individualized assessment and treatment that would “diagnose” and “treat” the causes of criminality like medical doctors were able to cure other forms of illness. This medical model of inmate services was referred to as the “rehabilitative ideal.”^{xxi} It is in this environment that prisons become correctional facilities. The Juvenile Justice and Delinquency Prevention Act of 1974 was intended to be rehabilitative and keep youth from the punitive effects of the adult criminal justice system.^{xxii} Rehabilitation fails in that it seeks to tackle the mental deterioration in individuals without regard to external forces.^{xxiii} Additionally, rehabilitation does nothing to stop excessive punishment. It only seeks to rehabilitate the individual during or after the punishment process.^{xxiv}

The Restitution Approach emerged in the 1970s from the rise of victimology and seeks to bring financial restitution to victims through compensation.^{xxv} It seeks to minimize the role of government. Opponents argue that monetary restitution alone is inadequate because it lacks vision.^{xxvi} Another problem with this approach is that the wealthier one is the more able they can afford to offend. It significantly advantages the wealthy and seeks to eliminate any moral responsibility. Restitution advocates seek to see it used as a sanction rather than a deterrent.^{xxvii} Restitution is sometimes imposed in the ways of fines which have proven problematic and oppressive in the financial incentives it creates for institutional entities.^{xxviii}

All these approaches try but fail to eliminate a retributive and punitive system of justice. A full embrace and return to retributive justice in the United States was realized in the 1980s and 1990s as evangelicals embraced law makers whom vowed to get tough on crime.^{xxix} The emergence of right-wing public morality gave rise to mass incarceration, tough on crime, law and order, and the drug war. The juvenile justice system too adopted a retributive and punitive perspective over its original rehabilitative approach. Zero-tolerance policies in both the education system and the juvenile justice system emerged creating a school to prison pipeline and a system where youth were prosecuted as adults in criminal courts.^{xxx}

This punitive mentality is best seen in 1996 when Judge Carol Kelly of Cook County, Illinois, sentenced a 12-year-old boy to a state juvenile prison making him then the youngest in high security. The law concluded that the state can send children as young as 10 years old to prison. Snyder contends that the environment which gave rise to punitive measures such as this was one influenced and coddled by theology, particularly oppressive Christian Protestant theology.^{xxxi}

Retributive justice at some measure exists as a result of the worst interpretations of religion and sacred texts. Those same text contain concepts and teachings which imagine and conceive of an ideal justice restorative and transformative in nature. It now becomes the work of people of faith to reinterpret those texts to offer restorative and transformative alternatives to our current system.

If the root of the problem is in theological interpretation, then theological interpretation must be at the root of the solution.

Restorative & Transformative Justice Theology

Restorative Justice seeks to restore people and rebuild relationships broken through criminal acts. Instead of punishing offenders it attempts to heal both the offender and the offended, and the community.^{xxxii}

Pierre Allard and Wayne Northy writes that Christianity has many restorative justice principles. They argue that Jesus is seen by many as the Great Restorer in all teachings from the Sermon on the Mount to the very concept of resurrection.^{xxxiii} Allard and Northy interpret Jesus on the cross as an indictment on retributive justice practice towards teachings of forgiveness.^{xxxiv} They note that vengeance, retribution, and punishment have no room in Jesus' agenda.^{xxxv} An example of Jesus' view on justice can be seen in Luke 4:18-19. Jesus clearly sees restoration, healing of brokenness, and the release of people from incarceration as priorities.

Eliezer Segal writes a Jewish restorative interpretation of Exodus 22:3 which states "if he [the thief] have nothing, then he shall be sold for his theft." Segal interprets this law to recognize that theft is based on poverty. The Torah then requires restoration of the stolen property, while removing the root cause of the crime by providing honest employment for the criminal.^{xxxvi} He also argues that the Jewish halakhah (Jewish Law) shares restorative justice principles, such as an interest in the criminal's repentance, direct confrontation between litigants, and avoidance of punitive incarceration.^{xxxvii}

Nawal Ammar argues Islamic views on restoration are not a unified body of legislation but various interpretations.^{xxxviii} He writes that the most extreme examples of "Islamic Justice" must be understood within their context of poverty, underdevelopment, and colonialism. Some crimes cannot even be charged in a society that is deemed unjust.^{xxxix} Ammar extrapolates restorative principles present in certain crime classifications that offend the public and community right. The offender becomes obligated to make things right with the community. The community is within the restoration process and often represented by an arbitrator whom must be careful in deciding guilt or innocence. He writes, "This often results in the nullifying of Hudud crimes and transforming potentially punitive/retributive justice to the more transformative categories of Quisas and Ta'zir."^{xl}

Islamic views on justice have a strong emphasis on community and forgiveness. Provisions for restoration and reparations are present. The Prophet and his First Caliph had no specific space for prison.^{xli} Majid Khadduri writes that "the ultimate purpose of the Revelational penalties is to not to undermine, but to promote peace and order...the Revelation does not prescribe retributive justice for all wrongs, as some belong to God."^{xlii}

Ron Neufeldt argues that a restorative Hindu interpretation demands dharma (obligations or duties to each according to their caste) must be understood in its totality. For instance, higher

caste people have higher obligations and harsher penalties for transgressing. Higher caste individuals should know better than to harm someone else, particularly the vulnerable.^{xliii} Neufeldt also sees restorative principles in text which obligate kings to issue restitution as the required means of restoration to those harmed.^{xliv} Mahatma Gandhi reinterpreted dharma. Gandhi believed that one's dharma is to seek the truth in all religions and to use the lessons of selflessness and duty to all people especially victims of society.^{xlv}

David R. Loy restoratively interprets Buddhist texts. His first example is the Angulimala Sutta which describes the Buddha as influencing a murderer to renounce violence through restorative measures rather than punitive ones.^{xlvi} His second example is taken from the Lion's Roar Sutta that speaks to ways to control crime naturally from correctly understanding root causes. The text shows how community chaos is caused by lack of government responsibility to assist in supplying people's needs. This lack of responsibility results in violence and retribution.^{xlvii} His third example is the Vinaya which seeks to restore offenders and improve their spiritual and moral state and gradually takes everything about them into consideration. It is a shift from punishing guilt towards reforming intentions.^{xlviii} It starts from a principle that understands everyone is subject to offend, it is only a matter of what degree.

Sally King writes that new movements such as Engaged Buddhism challenge retributive justice as anger lashing out when it has the opportunity.^{xlix} The Khermer Buddhist concept for example, states that "vindictiveness is ended by non-vindictiveness." This interpretation sees that a post-colonial perspective includes the voices and experiences of the marginalized.

Restorative justice seeks to get offenders to own their actions, to understand the harm they have caused, to allow them to redeem themselves and to discourage them from causing further harm. For victims, its goal is to give them an active role in the process.¹ A 2007 study also found that it had the highest rate of victim satisfaction and offender accountability of any method of justice.^{li}

Faith leaders whom understand the power of restoration can be the nucleus to a transformed justice system. This role like certain Jewish traditions use faith leaders as arbitrators.^{lii} It also uses the faith leader as prophet calling the better conscious of the community to admit young people into restorative justice models rather than retributive ones. This transformative societal prophetic call critiques and demands better from the entire system.

Transformative justice seeks to take restorative justice much broader and looks at both the past and present harms holistically that cause the crimes committed. It seeks to transform the systems not only the situation.^{liii} Anthony Nocella writes that "Restorative justice stresses that the system is flawed, overworked, and retributive, but does not address why it exists, how it is racist, sexist, ableist, and classist, who it benefits, and how it was developed. Transformative justice however is explicitly opposed to helping someone get arrested, imprisoned, fired from their job, repressed, or oppressed. It is about looking for the good in others, while also being aware of complex systems of domination."^{liv} If the world is to transform, we need everyone to transform and everyone to be voluntarily in critical dialogue together.

Each faith tradition exists as an alternative to the societies in which they emerged. They seek to transform in totality somehow the systems and institutions contemporary to them. The prophetic lens offers an alternative view to society. In creating a restorative justice framework rooted in faith traditions and communities, we create an alternative to the punitive system we have now. A faith rooted community based wholistic system of care is a visionary undertaking that seeks to transform the juvenile justice system that uses prisons, fines, penalties, retribution and racial targeting to instead use restorative principles.

The modern theoretical roots of transformative justice are found amongst Quakers in New York^{lv} and Canada.^{lvi} Proponents contend that transformation comes through changes to lifestyle, consumerism, media, political power, institutions and corporate power and international networks.^{lvii} Judeo-Christian theology, would see messianic theology as a divine imperative towards individual and societal transformation. Dennis and Larry Tiffitt state that transformative justice enables the wider community to take responsibility for the underlying causes of crime, poverty, unemployment, discrimination and other deep social problems.^{lviii}

To transform the current youth justice system using the restorative and transformative theological lens faith communities and communities at large must work together to frame the moral imperative and form the restorative solutions to bring about total systems change.

An example of transformative and restorative justice would be allowing restorative minded communities to have the power to redefine what a sentence is and how a young person should complete it. This approach harkens back to all faith traditions restorative practices. Communities would be empowered to use restorative tools such as community conferences and healing circles which bring offenders, victims, family, friends, faith leaders, educators and mental health experts together to decide how best to repair the harm. Restorative practices like conferencing is a victim-sensitive, straightforward problem-solving method that demonstrates how citizens can resolve their own problems when given a constructive forum to do so.^{lix} Restorative tools like healing circles work well to transform the lives of traumatized youth and facilitate forgiveness.

Mental Health and Trauma

Restorative Justice looks to promote forgiveness and trauma in both victims and perpetrators. Bitterness and trauma left unresolved can prevent victims from having closure and healing and perpetrators from healing, responsibility and transformation. Additionally, undiagnosed mental health issues develop. Lee A. Underwood and Aryssa Washington state that fifty to seventy-five percent of young people in youth detention suffer from trauma and meet criteria for a mental health disorder.^{lx}

Mental health remains a taboo in many African American communities. When not given proper and consistent care, young people are especially vulnerable. The Centers for Disease Control and Prevention completed a study that found that most children ages of 5 to 12 who took their own lives between 1999 and 2015 were African American. Additional research as early as 2017

confirmed most who committed suicide were African American males diagnosed with attention-deficit disorder or attention-deficit hyperactivity disorder dealing with stresses at home and with friends.^{lxi}

Trauma also plays a role in the behaviors of youth. According to SAMSHA, individual trauma results from an event, series of events, or set of circumstances experienced by an individual as physically or emotionally harmful or life-threatening with lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being.^{lxii}

Young people whom experience trauma have much harder times regulating emotions such as anger anxiety, sadness, and shame.^{lxiii} According to Price and Dodge, anger is linked to aggression in particular to 'reactive' aggression which involves responding with hostility and defensiveness to another's behavior. The data show that children who demonstrate 'reactive' aggression are at risk for poor peer relationships and many other social and psychological problems.^{lxiv}

It is imperative that youth receive trauma-informed care which “realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization.”^{lxv}

Judah Oudshoorn writes how colonialism and oppression creates collective trauma experienced generationally in indigenous youth in Canada and how it affects their behavior.^{lxvi} In 2011 here in the United States, the Community Healing Network and the Association of Black Psychologists collaborated to use Emotional Emancipation Circles to help Black people heal from the collective trauma of white supremacy.^{lxvii} Oudshoorn uses the understanding of collective oppressive trauma as part of an argument that calls for a “trauma-informed Youth Justice system.”^{lxviii}

Fania Davis, Co-Founder and Executive Director of Restorative Justice for Oakland Youth stated the Oakland school board passed a resolution in 2010 adopting restorative justice as an alternative to zero-tolerance policies. Fania Davis writes “youth high school students in Oakland with failing grades and multiple incarcerations who were not expected to graduate not only graduated but graduated with high honors. Girls who have been long time enemies become friends after sitting in a peacemaking circle. Instead of fighting, students go to the restorative justice room and ask for a talking piece and circle. Youth reported that they are doing the circle at home with their families.”^{lxix} Price and Dodge's theory suggest that forgiveness reduces anger, and that a decrease in anger will lead to more positive social behavior and academic achievement and to less depression and anxiety.^{lxx}

Many communities began using the juvenile justice system as substitute to reduced public mental health services for children in the 1990s. Community-based alternatives have been proven to work better than the juvenile justice system even for youth who commit serious and violent crimes.^{lxxi}

Conclusion

Retributive interpretations of religious texts have given moral credence to the youth corrections system we have today. The system we have has left our children and communities broken. In those same scriptures are messages of hope, restoration, community, care, love, and transformation. It becomes the work of people of faith and communities to reinterpret sacred texts restoratively and create the moral culture that shuns retribution and embraces restoration, mercy, and grace.

There is an opportunity for houses of worship and faith leaders to become facilitators and facilities of restoration. Houses of worship in and around our most troubled communities can be places of refuge and arbitrators towards a better more transformative way. New possibilities for healing are available for both victims and offenders.

Imagine a transformed youth justice system which sees young people for their potential not their offense. Envision a trauma informed system where children are healed and made whole. Visualize a system where well-informed communities take responsibility for youth and don't leave them in the hands of prisons. Picture a system where houses of worship, schools, mental health and community programs work with families to resolve conflict. See a system which identifies the systemic issues that arise from these mediations and advocates for public policy and institutional changes necessary to alleviate root causes. Imagine all this done from a passion and moral imperative greater than the zealous rage that has created the current punitive reality. Clergy, mental health experts, advocates, community leaders and young people can work together to reimagine youth justice. Historically, theology has shifted the moral paradigm and "God Talk" can shift it again.

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